

- c) a vegetable gum in an amount of about 0.05% to 0.2% by weight;
- d) an alginate in an amount of about 0.05% to 0.2% by weight;
- e) a preservative;
- f) a food grade acid;
- g) said composition being essentially sugar and maltodextrin free.

18. (Amended) A glaze forming composition for bakery products comprising;

- a) a modified food starch;
- b) water;
- c) a vegetable gum;
- d) an alginate;
- e) a preservative;
- f) a food grade acid;
- g) said composition being essentially sugar and maltodextrin free.

Remarks:

Applicant hereby request a three (3) month Extension of Time to respond to the Office Action. The small entity Extension of Time fee of \$465.00 is submitted herewith. Charge any additional fees or credit any overage to deposit account no. 06-2145.

In response to the Office Action dated 2/18/03, Applicant has amended claims 1 and 18 to require that the composition be sugar and maltodextrin free. Support for the Amendment is found on pages 2 and 3 of the application and in Example 1. This response is supported by the Declaration of Robert M. Smith.

In the Office Action dated 2/18/03, claims 1 through 18 were rejected as unpatentable under the provisions of 35 U.S.C. § 103(a) in view of US Patent No. 5,976,586 (Feller).

Applicant's invention as set forth in independent claims 1 and 18 requires a sugar-free and maltodextrin free surface glaze forming composition for use on bakery products. As set forth in claim 1, the composition includes modified food starch in an amount of 10% to 25% by weight, water in an amount of 70% to 90% by weight, vegetable gum in an amount of .05% to .2% by weight and alginate in an amount of .05% to .2% by weight, a preservative and a food grade acid.

Generally, the Feller composition requires a reducing sugar, a carrier, food acidulant, preservative, water, modified food starch and vegetable gum. In the specific embodiment of Example 1, the Feller product of the '586 patent required both high fructose corn syrup (sugar) and maltodextrin. See column 6, lines 5 through 15. Thus, the Feller patent certainly does not teach the avoidance of both maltodextrin and sugar. Both such additives can cause a problem in glaze compositions. Both products can add calories.

Reconsideration of the rejection over Feller is respectfully requested. The claimed glaze composition shows superior properties, particularly when used as a

glaze for bakery products such as pies, croissants and flaky pastries. The only specific example of the Feller product is found in Example 1 of the patent in column 6 lines 5 to 15 and requires the following ingredients:

<u>Ingredient</u>	<u>by Weight</u>
chelated agar	0.28
gum arabic	0.28
microcrystalline cellulose	0.28
modified corn starch	2.97
water	90.19
sodium benzoate	0.05
potassium sorbate	0.05
citric acid	0.50
high fructose corn syrup (42 DE)	3.72
maltodextrin	1.86
	100.00

As can be seen, the specific example includes both high fructose corn syrup which is a sugar and maltodextrin. Both of those ingredients are excluded from Applicant's invention. While Feller may mention the use of a wide variety of possible combinations in its disclosure, it clearly does not set forth the specific combination set forth as claimed in claims 1 and 18. All that can be said of Feller is that it broadly discloses combinations other than its concrete Example 1. It instructs one to use sugar and maltodextrin which are excluded from applicant's composition. Thus, Feller does not suggest the claimed invention. See Ultradent Products Inc. v. Life-Like Cosmetics Inc. 44 USPQ2d 1336 (Fed. Cir. 1997).

The composition of the claimed invention is markedly superior to the products made in accordance with the Feller patent. This conclusion is supported by the Smith Declaration and the original data in the application. In the Smith Declaration, tests were reported comparing Example 1 of the Smith application herein at issue with the Example 1 in the Feller '586 patent. Compositions of both examples were prepared and tested. In Test 1, European country classic rolls were baked. Six (6) rolls were sprayed with the composition of the present application and compared with six (6) rolls sprayed with Example 1 from the Feller patent. The rolls were allowed to sit for twenty (20) minutes and then placed in plastic bags and sealed to reproduce bakery conditions. They were evaluated the next day for tackiness and shine. The rolls of the claimed composition had a good shine whereas the rolls of Example 1 of the Feller patent had no shine. In Test 2 of the Smith Declaration, frozen pies were compared. Two (2) pies were removed from the freezer, one sprayed with the claimed composition of the Smith application and one sprayed with the composition of the Feller patent. Pies were baked and compared. The pies sprayed with the Feller patent had no shine whereas the Smith application composition had a good shine.

In Test 3, studies were conducted to determine the freeze-thaw characteristics of the claimed composition and that of the Feller patent. The claimed composition had good freeze-thaw characteristics. That is, the product could be frozen and then used without deleterious consequences. On the contrary, the Feller formula fell out of the solution and had granule particles

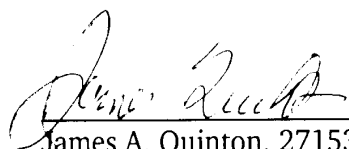
throughout the patent. The Feller composition did not provide a good shine on rolls when used.

The data contained in the original application also supports the superiority of the claimed invention. On page 9 of the application, Example 2, a composition of Applicant's Example 1 was compared with a Lawrence Food commercial product, the Assignee of Feller. The product was marked with the Feller patent no. and had a stated composition of water, corn sweeteners, modified starch, maltodextrine, vegetable gum, citric acid, potassium sorbate and sodium benzoate. Hard rolls were compared with the product of the claimed invention, Example 1, and the product made according to the Feller patent. The rolls sprayed with the product of the claimed composition had a high gloss great shine. The Feller product had little shine and had an unsightly white film left on the rolls. A further comparison was made in Example 3 between the claimed invention of Example 1 and the Feller patent. Here, pies were baked. The product of the Feller patent had no shine whereas the pie baked with the composition of Example 1 of claimed invention had a glossy shine and an even browning of the pie crust. In Example 4, freeze storage studies were performed on the composition in Example 1 and the Feller patent composition. Again, the claimed invention was superior in that the claimed invention could be frozen and reused whereas the composition of the Feller patent could not be frozen and usefully reused.

Thus, it is submitted that Applicant's invention as claimed is unobvious in view of Feller. The claimed invention is a superior glaze for pies and rolls and the

like. As a result, it is submitted that Applicant's invention is patentable over the art of record. An early Notice of Allowance is earnestly solicited.

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(Amended) A surface glaze forming composition for use on bakery products comprising;

- a) a modified food starch in an amount of about 10% to 25% by weight;
- b) water in an amount of about 70% to 90% by weight
- c) a vegetable gum in an amount of about 0.05% to 0.2% by weight;
- d) an alginate in an amount of about 0.05% to 0.2% by weight;
- e) a preservative;
- f) a food grade acid;
- g) said composition being essentially sugar and maltodextrin free.

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2. A surface glaze forming composition according to claim 1 wherein said preservative is sodium benzoate, potassium sorbate, or both.

3. A surface glaze forming composition according to claim 2 wherein said preservative is sodium benzoate in an amount of about 0.1% to 0.5% by weight and potassium sorbate in an amount of about 0.1% to 0.5% by weight.

4. A surface glaze forming composition according to claim 1 further comprising said composition having a pH of about 4.5 or lower.

5. A surface glaze forming composition according to claim 2 wherein said modified food starch is wheat starch.

6. A surface glaze forming composition according to claim 5 wherein said alginate is propylene glycol alginate.

7. A surface glaze forming composition according to claim 5 wherein said wheat starch is in an amount of about 12% to 16% by weight.

8. A surface glaze forming composition according to claim 6 wherein said vegetable gum is xanthan gum.

9. A surface glaze forming composition according to claim 8 wherein said xanthan gum is about 0.07% to 0.1% by weight.

10. A surface glaze forming composition according to claim 9 wherein said food grade acid is citric, acetic, malic or phosphoric acid.

11. A surface glaze forming composition according to claim 10 wherein said food grade acid is citric acid.

12. A surface glaze forming composition according to claim 8 further comprising an antifoaming agent in an amount of 0.1% to 0.7%.

13. A surface glaze forming composition according to claim 1 or 11 wherein said composition is 2.5 cal/gm or less.

14. A surface glaze forming composition according to claim 8 wherein said bakery products are pies, croissants and flaky pastries.

15. A surface glaze forming composition according to claim 8 wherein said bakery goods are pies.

16. A method of forming a high gloss glaze on a bakery product that is crack resistant comprising spraying a coating of the composition according to claim 1 or 11 on a bakery product.

17. The method of forming a high gloss glaze according to claim 16 wherein said bakery product is a pie.

18. (Amended) A glaze forming composition for bakery products comprising;

- a) a modified food starch;
- b) water;

- c) a vegetable gum;
- d) an alginate;
- e) a preservative;
- f) a food grade acid;
- g) said composition being essentially sugar and
maltodextrin free.